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File No. O. Saranyam

Legal Department
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^A/₅₇ Subject:— Opinions regarding
Saranyam

File No. O. Saranyam / 51

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382-A

C O N T E N T S.

Legal Department File No. O. Saranjams/51. --

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Re: Saranjams

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EVY. 29/6.

Legal Department.

Successor to
Saranjam estate.

Saranjam Rule 2.

While the adopted son acquires the rights of a son in the adoptive family, he loses all the rights of a son in his natural family including the right of claiming any share in the estate of his natural father or natural relative or any share in the coparcenary property of his natural family (see Mulla's Hindu Law, 10th Edition, p. 568). Ramrao Dajirao, natural son of the deceased Vinayakrao, who was given in adoption will, therefore, have no claim over his natural father's estate. It appears that although Vinayakrao was holding jointly with Ramrao Dajirao a 6/15th share in the Dhulegaon Saranjam they were holding it as tenants-in-common without any right of survivorship, which fact may if necessary be verified. It is stated that the Saranjam Rules in the Bombay State was generally followed in the Sangli State prior to merger. Under Rule 2 of the Saranjam Rules a Saranjam which decided to be hereditarily continuable shall ordinarily descend to the eldest male representative in in the order of primogeniture of the senior branch of the family descended from the first British grantee or any of his brothers who were undivided in interest. In accordance with the principle contained in this rule the name of Baburao Balwantrao, the grandson of Vinayakrao's next uncle, who is the eldest male member of the senior surviving branch will have to be entered in place of the deceased Vinayakrao. Ramrao who is the adopted son of Dajirao belongs to an entirely different line of descent and Baburao Shamrao belongs to a remoter line of descent. Their names cannot, therefore, be considered as successors to Vinayakrao. The view taken in the P. & S.D. note is correct.

Sd/-

Additional Secretary to Government.

Legal Department.

In their letter (Ministry of States) No. F-217-P/49 dated the 10th August 1950, the Government of India have reviewed the legal position in respect of the Feudatory Jagirdars of Kolhapur namely the Jaghirdars of Bavda, Vishalgad, Kagal Senior, Kapshi, Ichalkaranji, Kagal Junior, Torgal, ~~Sax~~ Sarlashkar Bahadur and Himmat Bahadur. It is true that in the treaties between the British Government and the Kolhapur Darbar, the Kolhapur Darbar had agreed to continue those Jaghirs. But by the Indian Independence Act, 1947, these treaties lapsed and the Jaghirdars cannot now claim the benefit of the said treaties. The Government of India in their letter have stated that,-

" ---- the position of these Jaghirdars on the 10th November 1948 (the date of the Kolhapur Maharaja's order) was quite clearly that of feudatory chiefs who were subordinate to the Maharaja, whose Jaghirs were part of the State and whose administrative and jurisdictional powers were not only limited, but also subject to reduction, and even resumption, at the will of the Maharaja. They were not in the same position as the semi-jurisdictional chiefs or Talukdars of Gujarat, who did not owe allegiance to any Indian State, but were directly under the protection of the Paramount Power. The fact that Kolhapur could by a stroke of the pen deprive the Jagirdars of all their civil, criminal, revenue and other administrative power' is in itself

sufficient to show their subordinate character.

" ... According to the order (dated the 10th November 1948) of the Maharaja, the Jaghirdars were to have no responsibility ~~either~~ either for administration or for the collection of revenues after 1st December 1948; the land revenue (including benefits from Kadam lands and forest ~~revenue~~ revenue) was to be collected by Government agency and handed over as Saranjam to the Jagirdars after deducting only 5% as collection charges; and out of this saranjam, the Jagirdars were to pay 'service commutation, education cess, succession nazarana, etc.' according to the rules.

" This order, being in the nature of a political settlement between the Maharaja and the Jagirdars, is not binding on the successor Government, viz, the Government of Bombay. The Government of India are advised that the Government of Bombay are entitled to repudiate, and will be justified in repudiating the order in so far as it makes a grant of all the land revenue to the Jagirdars. At the same time, the Government of India would point out that it would no doubt be politic to take past history into account and to grant to each of these Jagirdars ex gratia a suitable annual pension. The amount of pension and ~~the~~ the terms of the grant should be carefully considered by the Bombay Government. It would perhaps be advisable to make the payments a charge on the consolidated fund of the State Legislation".

The question now raised for the R.L.A.'s consider-

tion appears to be how the settlement with the Jahagirdars is to be made by the Bombay Government e.g. whether by legislation or by agreement.

The legal position has been correctly stated by the Government of India in the aforesaid letter. The Maharaja of Kolhapur's Order No. 35 dated the 10th November 1948 was made in consultation with the Feudatory Jahagirdars. By paragraph 1 of that order the Civil, Criminal, Revenue and other administrative powers conferred upon these Feudatory Jahagirdars were withdrawn and by para 2 it was ordered that these Feudatory Jahagirdars should continue to be entitled to the Saranjam of all the land revenue (including the fiscal benefits arising from the Kadam lands in their Jahagirs and forest revenue therein as heretofore in accordance with Sanads granted to them long ago and continued ~~taxes~~ to them uninterruptedly for many generations); and that these Saranjam revenues should be held by the Jahagirdars in the same manner as other holders of Saranjams in the State and subject to the conditions laid down by laws or rules made thereunder in respect of Service Commutation, Education cess, Succession Nazarana etc. It is clear from these provisions that the order of the Maharaja is, in effect, in the nature of a political settlement with these Feudatory Jahagirdars. In Secretary of State v. Bai Rajbai (42 Indian R appeal 229) it was held "on change of sovereignty the inhabitants of the ceding States cannot carry on under the new regime the legal rights which they may have enjoyed under the old; and that the only legally enforceable rights they can have as against their new sovereign are those and only those

which that new sovereign by agreement express or implied or by legislation chooses to confer upon them." After the merger of Kolhapur State the agreements and settlements between the Maharaja of Kolhapur and his subjects would not be binding on the successor government namely, the Bombay State, unless those agreements or settlements are expressly or by implication agreed to. The Bombay State has not so far agreed to the settlement of 1948 between the Maharaja of Kolhapur and these Feudatory Jahagirdars. It would, therefore, be competent for the Bombay State to repudiate the aforesaid settlement or to come to any reasonable settlement with them. The order of the Kolhapur Darbar dated the 10th November 1948 refers to the rules of the State. This reference is to the Kolhapur Saranjam Rules. These Rules are at pages 976 to 980 of the Second Volume of the Kolhapur Revenue Vat-Hukums. It will appear that the Saranjam Rules of 1898 issued by the Government of Bombay under Act XI of 1852 and Bom. Act VII of 1863 were adopted mutatis mutandis by the Kolhapur State in 1902. Under paragraph 5 of the Kolhapur State (Application of Laws) order, 1949, all enactments in force in the Kolhapur State and corresponding to the enactments extended to that State under the said order were repealed.

Act No. XI of 1852 and Bom. Act VII of 1863 have not been extended to the merged State of Kolhapur. Hence the law corresponding to those Acts, which was in force in that State prior to merger can be said to have been saved and continued in force by virtue of paragraph 5 of the said

Application of Laws Order. The Saranjam Rules of Kolhapur (p. 976 of Vol. II. of Kolhapur Revenue Vat Hukums) are exactly similar to the Saranjam Rules, as framed by the Government of Bombay in 1898.

In regard to Saranjams and Jahagirs i.e. grants of Political nature in the Bombay State proper the enactments which refer to such grants are Act XI of 1852, Bombay Act II of 1863 and Bom. Act. VII of 1863. Saranjams are governed by the Saranjam Rules of 1898. It is true that Rule 10 of Schedule B to the Bombay Rent-Free Estates Act, 1852 (Act XI of 1852), section 2 of the Exemption from Land Revenue (No. 1) Act (Bom. XI of 1863) and ~~the~~ (No. 2) Act, 1863 (Bom. VII of 1863) refer to the power of the State Government to make rules in respect of Saranjams. But these provisions recognized the common law of the Sovereign power in respect of political grants to continue or resume at will or pleasure.

But the said power cannot be said to have been derived from the said three Acts. The source of that power has been held to be the sovereign right of Government in respect of Saranjams and Jahagirs and it is independent of the said Acts. The Sovereign right of the Government in respect of Saranjams and Jahagirs has been recognized by Courts in a series of judicial decisions. (See (1) 5 Bom. L.R. 983; (2) 50 Bom. 195 at p. 201; (3) 47. Bom. 327 at p. 335 (Privy Council decision); (4) 40. Bom. L.R. 400; and (5) 47. Bom. L.R. p. 214 at p. 216); In a recent decision of the Full Bench of the Bombay High Court in Daulatrao v. Province of Bombay, (49.

Bom. L.R. pp. 270 to 277) it has been held that the whole structure of saranjam Tenure is founded in the Sovereign right which can only change by conquest or by treaty. Amongst the propositions stated by Government for the decision of the High Court, one proposition was that Government have a common law right to resume a Saranjam at their pleasure (p. 274 of the volume). The following passage from the judgment is relevant:-

" An examination of the authorities, in my judgment, makes it clear that the whole structure of saranjam tenure is founded in the sovereign right, which can only change by conquest or by treaty. So founded, Jagirs and Saranjams with the ~~fix~~ feudal incidents connected with them, are granted or withheld at the will and pleasure of the sovereign power, and, if granted, the fixity of tenure is always subject to interruption and revocation by resumption, be it temporary or absolute in character. No incident normally applicable to private rights between subject and subject can fetter or disturb the sovereign will. Thus adverse possession by a ~~private~~ private person for however long duration is nugatory before a paramount resumption or re-grant. But Mr. Coyajee on behalf of the appellant, the Saranjandar, submits that even so the sovereign power has by its legislative constituent bound itself by rules, and that even if historically the basis of the tenure was the sovereign will and pleasure, the rules have created a new quality of durability. In my previous judgment (47 Bom. L.R. 214 at p.

216) I referred to these rules of convenience only and a further examination of them and their origin confirms me in that view. These rules ~~with~~ which were made in 1898 are made under rule 10 of Schedule B to Act XI of 1852 and under the second sub-clause to clause (3) of section 10 of Bombay Act VII of 1863.

" In my opinion the rules with which we are concerned cannot exhaust the general power or prevent Government from making a decision or determination referential to a particular saranjam, without altering the rules with regard to all of them. Accordingly, in my opinion, the answer in question I referred to us is 'No', that is to say, the saranjam tenure was not destroyed by adverse possession".

The principle enunciated and recognized in the said decision is applicable to the saranjams in the former Kolhapur State. The Sovereign right of the ruler of Kolhapur in respect of such saranjams vests in the Government of Bombay after the merger of that State by virtue of paragraph 4 of the Administration of the Kolhapur State Order, 1949. It is open to the Government to deal with the Saranjams at their will and pleasure without recourse to legislation. The recourse to legislation does not appear necessary as there seems no objection to a settlement by agreement. Government may, therefore, repudiate the agreement of 1948 between the Maharaja of Kolhapur and these Feudatory Jahagirdars and offer them some suitable pension consistent with their position and their past history as advised by the Government of India and if they accept it the question of

making the payment thereof a charge on the revenues of the State will have to be considered and legislation for the purpose would be necessary.

As the question is important, it will be desirable to consult the Advocate-General before taking any action. The Advocate General is requested to treat this case as urgent and to send his opinion at an early date.

Sd/-

U.R. to Adv. General No. 346-Conf1., dated
7th April 1951.

EVY. 28/6.

No. of 1951.

Advocate General's Chambers,
High Court,
Bombay, the 25th April 1951.

U.O.R. to the Advocate General of Bombay,
No. 346 (Confidential), dated the 7th April 1951.

O P I N I O N.

I am of the opinion, that it is not necessary to have recourse to legislation, and that the better course is for the Government to arrive at an agreement with the feudatory jagirdars, which agreement should be expressed in a notification or other executive declaration. Ofcourse, if whatever is finally settled as payable to them is to be constituted a charge on the revenues of the State, then legislation for that limited purpose will have to be enacted. I concur with the opinion contained in the letter ~~from~~ Government of India to the effect that the Government of Bombay is not bound by the political settlement between the Maharaja of Kolhapur and the jagirdars. The jagirdars are entitled to the saranjam the land revenue to be held as by other holders of Saranjam in the State, subject to the conditions laid down by the law or rules. The settlement by the Maharaja was of a political nature, and after the merger, the settlement would not be binding on the Bombay State, which has not in any way yet agreed to it. The Saranjam rules in the State were substantially the same as those prevailing in the Province of Bombay, (Saranjam Rules, 1898). The power to make rules was not derived from the Act 11 of 1852, Act 2 of 1863 and the Bombay Act VII of 1863, but from the paramount right of the Government independently of the Acts, which paramount power has been recognized in a number of judicial decisions which are mentioned in the Instructions, which need not

may be repeated, ending with Delatrao vs The Province of Bombay, 49 Bombay Law Reporter, p.270. The sovereign right of the Kolhapur Ruler vests in the Government of Bombay after the merger, and the State by virtue of paragraph 4 of the Administration of Kolahpur State Order, 1949.

Accordingly the State Government is entitled to repudiate the settlement and could resume the Saranjams with the consequence that they are at liberty in line of actual resumption to arrive at any such agreement as they think fit with the jagirdars.

Sd/-

Advocate General.

EVY. 28/6.

15.

Legal Department.

A copy of the Statement of the Case referred to the Advocate General, Bombay and a copy of the opinion given the Advocate General thereon are sent herewith.

Sd/-

Additional Secretary to Government.

U.R. to P. & S.D.(Confl.) No. 399, dated the 27th
April 1951.

EVY. 28/6.

Office of the R.L.A.

Entry of adopted
son's name to
Saranjam
Saranjam Rule 2.

Saranjam Rules are applicable to the Saranjams in the Miraj State which is merged in the Bombay State. Under rule 2 of these Rules, Government have reserved to themselves the rights for sufficient reasons to direct the continuance of the Saranjam to any member of the Saranjam family other than the eldest member of the Senior Branch of the family ~~either then~~ in the order of primogeniture or as an act of grace to a person adopted into the same family with the sanction of Government. Dattajirao has now been adopted with the sanction of the Bombay Government by the widow of Bapusaheb alias Digojirao, the last holder of the Saranjam. It would, therefore, be competent for Government to recognise Dattajirao as the heir of Bapusaheb alias Digojirao to succeed to the Saranjam, and on so recognising, he would be entitled to hold the Saranjam. The previous order of the Miraj State recognising Annasaheb as entitled to the share of Digojirao in the Saranjam would be superseded and the adopted boy would be entitled to the said share. The recognition of Annasaheb by the State authorities before the adoption was sanctioned will not entitle him to claim the share in the Saranjam. (See Anant v. Shankar, L.R. 70 I.A. 232). Moreover in the case of Saranjams, they are continuable at the will of Government. Sanction given to the widow to adopt cannot be questioned in a civil court and the adoption would be valid entitling the adopted son to claim the share in the Saranjam.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 7760, dated the 16th May 1951.

13207 dt. 23-6-51.

Submitted with ref. to P. & S.D. note at p. 91 ante. Please see Addl. Secy's opinion No. 3912, dt. 8th March 1951, (p. 83 ante), in which while holding that the name of Baburao Balvantrao, the grand-son of Vinayakrao's next uncle, would have to be entered in place of the deceased Saranjandar, Vinayakrao Appajirao, the Addl. Secy. had suggested that the fact that Vinayakrao and Ramrao were holding the share in the Saranjam as tenants-in-common without any right of survivorship might be verified. The Collector of Satara Sough accordingly reports (p. 89 ante) that the 6/15th share held by Ramrao Dajirao and Vinayakrao Appajirao, the deceased, has not been divided. The R.L.A. is requested to advise whether the position stated in the previous opinion holds good.

Please see U.R. to P. & S.D. No. 11639, dated the 23rd July 1951.

EVY. 28/6.

Office of the R.L.A.

It does not appear that Government has as yet come to any conclusion as to how the alienations such as inams or saranjams in the merged States should be dealt with. If that is so any order passed in this matter would be tantamount as amounting to giving recognition to the saranjam grant in the present case. The P. & S.D. should consider the point. If any order is to be passed, in the meanwhile, it should be distinctly stated that this order does not amount to the recognition of the saranjam grant. In this case if the saranjam grant is to be recognized, according to the rule of lineal primogeniture which applies to saranjams in the Bombay State, Baburao Balvantrao as the eldest male member of the senior surviving branch is entitled to succeed. Ramrao having been given in adoption has no claim in his natural line.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 11639, dated the 23rd July
1951.

EVY. 28/6.

Office of the R.L.A.

Village Deshing in Budhgaon taluka in Satara South District is a political saranjam village and it is at present held by Shri Tukoji Rao alias Appasaheb Ghorpade. Shri Ghorpade has it appears disposed of certain lands out of this sanjam without permission of Government and this fact having come to notice of Government the Chief Secretary desires to know whether any action cannot be taken in respect of these sales.

2. No Sarajam Rules similar to those in force in the Bombay State were in force in the Miraj (Junior) State in which the saranjam village was situated. The Collector has, however, reported that the grant of this Saranjam was made by the Shahu Chhatrapati of Satara and the grant was a kadim grant and that the Saranjam can be treated as a political inam. The sanad granted to the Saranjamdar is not traceable and the terms of the grant are not known. On the basis of the Mamlatdar's Report, however, the Collector states that the Saranjamdar can dispose of Sheri lands without any restrictions from Government.

3. The view expressed by the Mamlatdar is not correct. As observed by their Lordships in Secretary of State v. Girjabai, 29 Bom. L.R. 1503, the incidents of saranjam grant must be ascertained when there is no deed of grant forthcoming, from (a) the evidence, if any, in the case; (b) from legislative enactments; and (c) from judicial decisions. Failing all these, there would be nothing else but general principles of law to apply (see at p. 1508 of the Reports). The sanad in the present case is not forthcoming, nor were there any rules governing such saranjams in force in the Miraj (Jr.)

State. The Saranjam Rules of 1898 are also not applicable. It is obvious, therefore, that the incidents of the grant must be determined by the general principles of law.

4. Now according to Prof. Wison's Glossary, among the Maharathas the term 'saranjam' was applied specially to a temporary assignment of revenue from villages or lands for the support of troops or for personal military service, usually for the life of the grantee; also to grants made to persons appointed to civil offices of the State to enable them to maintain their dignity, and to grants for charitable purposes. These were neither transferable nor hereditary and were held at the pleasure of the Sovereign. They were divided into two classes, viz., (a) grants of revenue only; i.e. of the royal share of the produce of the lands comprised in the grant, and (b) grants of the soil itself. It would seem to follow from the nature of saranjams that on principle, the grantee would not, unless specially authorised, be able to convey a permanent title to any portion of the land, either by sale or by lease. Such sale or lease might be good as against himself but would be void as against the grantor (cf. 29 Bom. L.R. 1503 at p. 1508). The ~~st~~ sale of the Saranjam lands would, therefore, be inoperative as against this Government, and it would be open to Government ~~to~~ to disregard such sales when the saranjam falls to be resumed on the death of the present holder.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 13631, dated the 24th August
1951.

Office of the R.L.A.

The ownership in the Bagni Saranjam vests in the senior branch but a sub-share of the Saranjam with all the incidents of the Saranjam is recognized to be in the possession of the junior branch for which the junior branch gets a cash allowance of Rs. 1,242. Out of this ~~xxx~~ cash allowance of Rs. 1,242, an allowance of Rs. 50 per month, i.e. Rs. 600 per annum, was sanctioned to Shri T.G. Mantri in Government Resolution, Political and Services Department No. 1309/34 dated the ~~xxx~~ 4th February 1948. Shri T.G. Mantri is now dead. The question raised for the R.L.A.'s consideration is whether his widow, Radhabai, can be granted an allowance under rule 7 of the Saranjam Rules.

Rule 7 of the Saranjam Rules inter alia provides that every Saranjandar shall be responsible for making a suitable provision for the maintenance of the widow or widows of the preceding Saranjandar, his own brothers or any other member of his family who, having a valid claim arising from infancy, mental or physical infirmity rendering such member incapable of earning a livelihood, may be deemed deserving of support at his hands. No doubt Shri T.G. Mantri cannot be considered "a preceding Saranjandar" within the meaning of rule 7. But while granting an allowance of Rs. 600 in 1948, Shri T.G. Mantri was considered a member of the Saranjandar's family. If Shri T.G. Mantri was a member of the Saranjam family, there is no reason why his widow cannot be so considered. Even assuming that her claim for maintenance is not covered by rule 7 of the Saranjam Rules, still the Saranjam Rules do not exhaust the general power or prevent Government from making decision or determination referential to a particular saranjam without altering the rules with regard to all of them.

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(See Daulatrae v. Province of Bombay, 49 B.L.R. 270 at p 276). It would, therefore, be competent for Government to direct that a reasonable allowance, should be paid to the widow Shrimati Radhabai out of the allowance of Rs. 1,242 payable to the junior branch.

Sd/-

Remembrancer of Legal Affairs.

U.R. & P. & S.D., No. 13517, dated the 23rd August 1951.

EVY. 28/6.

Office of the R.L.A.

Recognition of
heir.

Jahagir grant in
Merged State.

The question in this case is whether there is any objection to enter the name of the eldest son of the Jahagirdar of Kukudne in the merged State of Surgana as the holder of the Jahagir. The Jahagirdar has died and it is stated the according to the practice in the State, the eldest son would be the next heir. This practice is similar to the practice followed in the Bombay State proper. Ordinarily therefore there would not be any objection to enter the name of the eldest son of the Jahagirdar as the holder of the Jahagir. But such entry would amount to the recognition of the Jahagir in the merged State of Surgana. The question of recognising such grants in merged States is still under the consideration of Government. If therefore the name of the eldest son is to be entered in the present case, it should be made clear that it is provisional pending the decision of Government regarding the giving or recognition to the grant.

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.D., No. 16111, dated the 10th October 1951.

EVY. 28/6.

Office of the R.L.A.Gaiendraged Saranjam.

The estate was regranted to the present holder by G.R., P. & S.D. No. 8969, dated the 17th December 1941. Rule 5 of the Saranjam Rules provides that every saranjam shall be held as a life estate and it shall be formally resumed on the death of the holder and in cases in which it is capable of further continuance, it shall be made over to the next holder as a fresh grant from Government, unencumbered by any debts or charges save such as may be specially imposed by Government itself. From the report of the Collector of Dharwar it appears that the deceased saranjandar had not created any charges on the estate but had created tenancies in respect of certain survey numbers. Resumption and regrant under rule 5 does not free the estate of any alienations except debts and charges. It has been held that rule 5 does not provide for freedom from all tenures, rights, incumbrances and equities created in favour of another person (Madhavrao vs. Anasuyabai, 18 Bom. L.R. 768; Madhavrao Vs. Inam Baput, 26 Bom. L.R. 433 and Phadnis' Law of Saranjam-s and Inams at p. 42). In the circumstances, resumption and regrant under rule 5 of the Saranjam Rules will not have the effect of terminating the tenancies. Moreover, the saranjandar has acquiesced in the tenancies by acceptance of rent and they will, therefore, be binding on him subject to his right to terminate them under the Bombay Tenancy and Agricultural Lands Act, 1948, which now governs the relations of landlords and tenants in this State.

Sd/

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 16537, dated the 18th October

1951.